EXTENSIONS OF REMARKS

THE BILL OF RIGHTS PROCEDURES ACT

HON. CHARLES McC. MATHIAS, JR.

OF MARYLAND

IN THE SENATE OF THE UNITED STATES

Wednesday, May 26, 1976

Mr. MATHIAS. Mr. President, on April 29, 1976, I introduced, with Senator TUNNEY, the Bill of Rights Procedures Act. This legislation, S. 3349, would establish procedural safeguards to protect citizens' privacy rights with regard to records held by banks, credit, and telephone companies. The bill also sets out procedures for Federal officials to follow in seeking to examine the outside envelopes of mail received by an individual, and for telephone company monitoring of calls for service quality. In addition, the bill extends the existing wiretap law to telegraph, telex, and other nonverbal messages.

The urgency of congressional action on S. 3349 is highlighted by the recent Supreme Court decision in United States against Miller where the Court held that the Constitution does not itself provide American citizens with any assurance against unjustified inspection of their bank records by Federal agents. The Court based this decision on the premise that one's bank records—checks, balances, loan data, and other information—belong to the bank and not to the individual account holder. Considering this reasoning, the need for corrective legislation in this area is clear.

The Bill of Rights Procedures Act has received wide bipartisan support in the Congress since its introduction. A number of organizations have also endorsed the bill, including: the AFL–CIO; the American Bankers Association; the Retail Clerks International Association; American Express Co.; Bank of America; Communications Workers of America; House Republican Task Force on Privacy; National Association of Mutual Savings Banks; and the California Bankers Association.

I want to draw the attention of my colleagues to the favorable action that the Bill of Rights Procedures Act has received in the House of Representatives. The House companion bill—H.R. 214, originally authored by my colleague, Congressman CHARLES MOSHER of Ohio—was reported out of the House Subcommittee on Courts, Civil Liberties and the Administration of Justice by a 5-to-0 vote. The full House Judiciary Committee is expected to soon take up the bill.

Support for legislation along the lines of the Bill of Rights Procedures Act has also come from a number of newspapers, including the Baltimore Sun in my own State of Maryland, and the Washington Star-News.

Mr. President, I ask unanimous consent that these two editorial endorsements be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Baltimore Sun, May 3, 1976]

NO BANKING ON PRIVACY

Poor Mitch Miller. Three weeks after Houston county, Georgia, sheriff's deputies found still equipment in a van, in late 1972, firemen stumbled on a 7,500 gallon distillery in a burning warehouse. Treasury agents subpoenaed two Georgia banks for records of Mr. Miller's accounts. The banks complied without giving him a chance to fight the subpoenas. The checks and deposit slips provided leads and became evidence in Mr. Miller's conviction on federal charges relating to illegal production of whiskey. And now the Supreme Court says that was proper.

Poor everyone else. The language in Justice Powell's opinion for a majority of seven leaves no doubt that in the eyes of the Court as well as of Congress, the respected confidentiality of what you tell your priest and lawyer does not extend to communication with your banker. Mr. Miller was as entitled by the Fourth Amendment as the next man to be secure in his person, house, papers and effects against unreasonable searches and seizures, with no warrants issued except upon probable cause, supported by oath or affirmation, describing the thing to be seized. The Fourth Amendment would have been violated had those checks and deposit slips been his. But seven justices held that they were the bank's that "checks are not confidential communications," that there was "no intrusion into any area" protected by the Amendment and that he had no "expectation of privacy" at the bank. Justices Brennan and Marshall disagreed.

This issue flows from the Bank Secrecy Act, a major if misnamed weapon provided by Congress in 1970 for the war on white collar crime. It compels banks to keep records of everyone's money flows for just such purposes as here described. The Court in 1974 held the compulsory record-keeping constitutional. This case was about access to those records. Despite some specious reasoning of Justice Powell, those were Mr. Miller's transactions more than they were the bank's. To have required the agents to subpoena Mr. Miller as well as the banks would not have curtailed law enforcement.

The right of privacy is a comparatively recent Supreme Court discovery, but there is no longer any predicting where it will appear and where disappear. "Privacy" protects a woman's right to an abortion, but not to secrecy about her money once she puts it in the bank. The vehemence of Justice Powell's repudiation of confidentiality in banking could someday inspire frivolous disclosure without subpoena. A part of our lives is traceable not only through bank accounts, but also phone bills, credit cards and the like. Are we really renouncing Bill of Rights protections when we don't pay cash? The remedy lies with Congress.

[From the Washington Star-News, May 25, 1976]

EXPECTATIONS OF PRIVACY

In the months since Rep. Charles Mosher and Sen. Mac Mathias began trying to nudge their "Bill of Rights Procedures Act" through Congress, we have had at least one Supreme Court decision and a host of investigative disclosures that underscore its wisdom.

The Supreme Court, for its part, recently considered a Georgia case in which a citizen's bank records were used, without prior notice, to convict him of illegal manufacture and sale of whiskey. Most of us regard bank transactions as confidential and would welcome the amenity (if it is only that) of being put on notice when federal revenuers or other sleuths take an interest in them. Yet the Supreme Court held, astonishingly, that the Bank Records Act requires no such notice, that such documents as checks and deposit slips are as public as a billboard.

And of course the widespread distribution of credit records, the surveillance of mail at the Post Office, and other such random invasions of privacy have been detailed ad nauseam, time after time, in recent congressional hearings.

The Mosher-Mathias legislation takes a moderate approach to the prying eye of Big Brother. According to a summary prepared by Congressman Mosher's staff, "it would not prohibit activity now considered to be legal. Rather it would establish clear guidelines and procedures to be followed when there would be a legal invasion of a citizen's privacy," whether as to bank and credit company records, telephone calls, mail, cables and telegrams, or "service" listening in on telephone equipment.

Consider, for illustration, how the legislation might have worked when Treasury agents took an interest in those Georgia bank records. It would not have altered the Supreme Court's view that one's checking account is, in effect, open to public inspection. But it would require at least one of the following steps of due process: The bank would have to obtain the written consent of the customer under investigation, or a subpoena would have to be issued with a copy to the customer, or a search warrant would be required.

Similar or parallel protections would be extended to anyone subjected to a so-called "mail cover" (in which one's mail is not actually opened but is systematically monitored over a period of time for information appearing on envelopes or wrappings), credit inquiries, telephone records, and the like.

This bill (HR 214) comes before the House Judiciary Committee this week. That committee's subcommittee on courts, civil liberties, and the administration of justice has unanimously endorsed it. Its sponsors have spent every effort to make it as non-controversial as such legislation can be without being toothless. For instance, they have agreed to strip it of a section restricting "national security" wiretaps.

It is wise and worthy legislation, and many of the private institutions it would affect (e.g., American Express, the Bank of America, the National Association of Mutual Savings Banks) have already endorsed it.

It is time to restore some order and due process to the promiscuous disclosure of private matters involving, in the words of Justice Lewis Powell, "legitimate expectations of privacy."

CONGRESSMAN TORBERT H. MACDONALD

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 26, 1976

Mr. ANDERSON of California. Mr. Speaker, like the rest of my colleagues, I was saddened to learn of the untimely death of Torbert H. Macdonald on Friday, May 21. Until he announced his retirement last month, I had looked forward to many more years of outstanding leadership from the gentleman from Massachusetts. His retirement was a loss to the Congress, the Nation which he served as a military man and as a leg-

islator, and to the people in his district whom he represented so ably. Torbert Macdonald's death was a grievous personal loss to his friends, family, and all who had come to know and respect him.

Torbert will probably be remembered most for his authorship of legislation banning local blackouts of sold-out professional football games, and for his leadership in the fight to control violence on television. As chairman of the Interstate and Foreign Commerce Subcommittee on Communication, Representative Macdonald exercised great power over the broadcasting industry. He used that power for the common good, seeing that the principals of free speech were maintained, and at the same time insuring that the public airways were used by broadcasters in the best public interest.

As captain of the Harvard football team in 1939, Torbert Macdonald was a roommate of our former President, the late John F. Kennedy. During World War II, he entered the Navy and saw action on PT boats during the battle for the Pacific, winning a Silver Star.

Following the war, Torbert Macdonald received his law degree from Harvard University. He worked as a lawyer for the Motion Picture Producers Association and the National Labor Relations Board prior to his election to Congress in 1955.

Representative Macdonald's background was instrumental in many of his legislative accomplishments. Besides the blackout ban, he will be remembered for his support of the public broadcasting system, and in his efforts to see that energy cost remained within the reach of the average citizen. His knowledge of sports came from his collegiate career in both football and baseball. Torbert loved sports; but he never ceased his efforts to see that they were accessable to every American.

Mr. Speaker, Torbert Macdonald was a man who led a full and successful life. He leaves behind him a legacy of many important legislative accomplishments, and the warm memories of his family and friends.

My wife, Lee, joins me in expressing our most sincere condolences to Torbert Macdonald's lovely wife, Phyllis; their children, Torbert, Jr., Brian, Robin, and Laurie; his mother, Harriet Hart Macdonald; and his two sisters, Gertrude Ederman and Margaret Prior.

ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION ACT AMENDMENTS OF 1976

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 26, 1976

Mr. WAXMAN. Mr. Speaker, I urge my colleagues to support the 1976 amendments to the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act. This legislation extends for 3 years the programs of Federal assistance under the act and amends several portions of the existing law.

Alcohol misuse and abuse rob an individual of his or her health. Available medical data supports the contention that alcohol abuse increases an individual's susceptibility to a number of life-threatening diseases. Recent evidence suggests that alcoholism causes malignant diseases, such as cancer and cirrhosis. Alcoholism itself is a disease. Rather than invoke criminal sanctions against those who are victims of alcohol abuse, we now recognize that alcoholism is a disease requiring early diagnois and curative treatment.

Alcoholism contributes significantly to increased morbidity and mortality. Recent studies indicate that individuals diagnosed as alcoholics are more likely to die at an earlier age than the general population. Heavy drinkers, and those who have problems associated with high consumption of alcohol, die younger than moderate drinkers. Among the groups with alcohol-related increased death rates, women have higher rates than men, and the youngest-age classes have the highest mortality rates.

Alcohol abuse, also, threatens the safety and lives of innocent parties. The relationship between alcoholism and death can be direct, as in the case of an overdose, or indirect, as in the case of traffic accidents. Alcoholic induced physical and mental states are associated with increased incidence of violent deaths of all kinds, including suicide.

Although the disease of alcoholism has reached epidemic proportions, little is in fact known about why or how certain individuals become afflicted. There is little agreement among the so-called experts about the causes and treatment of alcoholism. Of all our health problems, the need to deal more effectively with alcoholism is most urgent.

The bill before us specifically seeks to increase our capacity to deal with this enormous problem. It sets out to promote research by designating several national alcohol research centers to conduct research on alcoholism and related abuse problems.

This legislation, also, requires that special attention be given to the problems of women and minors who are alcoholics. The alcohol abuse problems of women and minors are unique and have thus not been given the recognition they deserve. Specifically, this legislation authorizes the Secretary of Health, Education, and Welfare to give special consideration to applications for project grants for programs designed to deal with the alcohol abuse problems of these two groups.

The number of youthful alcoholics has reached alarming proportions. Approximately 5 million youth drink on a weekly basis; 22 percent of the 7th through 12th graders drink once a week or more; 17 percent of this age group drink 3 to 4 times per month; 24 percent of 13-year-olds are classified as moderate to heavy drinkers; and 57 percent of 18-year-olds are classified as moderate to heavy drinkers. It is important that we begin to reach out to young Americans by offering them much needed counseling and treatment services.

Women account for the largest increase in the drinking problem in recent years according to Dr. Morris Chafetz, former Director of the National Institute on Alcohol Abuse and Alcoholism—NIAAA. This is not only a problem for the women involved, but for the generation yet unborn. Excessive alcohol consumption has a detrimental impact on fetal development. Among those who have a drinking mother, the incidence of child abuse and child neglect is greater than in the general population.

The pernicious aspects of alcoholism are wide ranging. Alcoholism has a deleterious impact on the individual, his family and friends, and on society. A continued Federal commitment to programs of prevention, treatment, and rehabilitation is of critical importance to the American people. For this reason, I support this legislation.

GENERAL MORRIS IS NAMED CHIEF OF ENGINEERS

HON. JAMES R. JONES

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 26, 1976

Mr. JONES of Oklahoma. Mr. Speaker, in the last few days two exceptionally happy events took place in Oklahoma. First, the Kaw Dam and Reservoir was dedicated near Ponca City, Okla. Second, Maj. Gen. John Morris was named Chief of the Army Corps of Engineers.

General Morris has served Oklahoma, and the Nation, in a way few men could. Only by his perseverance and determination could so much be done to benefit so many in such a short period of time. I am speaking of the water resource development efforts that the Army Corps, under the direction of General Morris, carried out in the Tulsa district.

A district engineer serves a board constituency of people. People affected by the ravages of flood and people concerned with maintaining the environment. Few men have served both goals with the efficiency and people-oriented convictions, as General Morris. Only through this unique blend of characteristics could conflicts be resolved that would enable flood protection projects to progress and the environment to maintain its position unaffected.

General Morris served Oklahomans at a critical stage in the development of the McClellan-Kerr Waterway and it may be said that he was as responsible for its completion as any man. Jack should be noted as one of our country's finest military men, a man who is capable of planning, constructing, and operating a program for development and use of the Arkansas River system that in the past left people homeless, destroyed lives and property. I know he will do the same for this country, and I know of no finer man to meet the present and future water resource needs of the Nation.

My home, Tulsa, enjoys a navigable waterway, flood control, hydroelectric power, and recreation because of the